DOCUMENT RESUME

ED 087 990 CG 008 742

AUTHOR	McNulty, Jill F.
TITLE	The Right to be Left Alone.
INSTITUTION	Office of Youth Development (DHEW), Washington, D.C.
REPORT NO	DHEW-OHD-73-26036
PUB DATE	72
NOTE	28p.; Reprinted from The American Criminal Law Review, v11 n1
EDRS PRICE	MF-$0.75 HC-$1.85
DESCRIPTORS	Court Litigation; *Court Role; *Delinquents; Historical Reviews; Institutional Role; *Juvenile Courts; Legal Problems; *Legal Responsibility; *Youth Agencies

ABSTRACT

This pamphlet examines the question of what the proper role of the juvenile court should be. It specifically questions the wisdom of the juvenile court's involvement with children engaged in anti-social but non-criminal activity. It includes a brief discussion of the historical origin of juvenile court, along with a history of jurisdiction over the "wayward" child in Illinois. The political and social problems of juvenile court overreach are considered and several innovative legislative proposals are mentioned including: (1) The Runaway Youth Act; (2) The Illinois Unified Code of Corrections; (3) Illinois Youth Service Bureaus; and (4) The Child Advocate. Conclusions suggest that the business of juvenile court should generally be limited to offenders whose conduct would be a violation of the criminal law if committed by an adult. (Author/HMV)

ED 087990

CG

THE RIGHT TO BE LEFT ALONE

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
THIS DOCUMENT HAS BEEN REPRO
DUCED EXACTLY AS RECEIVED FROM
THE PERSON OR ORGANIZATION ORIGIN
ATING IT. POINTS OF VIEW OR OPINIONS
STATED DO NOT NECESSARILY REPRE
SENT OFFICIAL NATIONAL INSTITUTE OF
EDUCATION POSITION OR POLICY

CG 008 742

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Human Development
Office of Youth Development
DHEW Publication No. (OHD) 73-26036

The Right To Be Left Alone

By
Jill K. McNulty
Assistant Professor of Law
Chicago-Kent College of Law
Illinois Institute of Technology

U.S. Department of Health, Education, and Welfare
Office of Human Development
Office of Youth Development
Washington, D.C. 20201
73-26036

Reprinted from Volume 11, No. 1
THE AMERICAN CRIMINAL LAW REVIEW

© 1972
Permission to Reprint Granted—American Criminal Law Review

FOREWORD

This article questions the wisdom of the juvenile court's involvement with children engaged in anti-social but non-criminal activity, and focuses on the overreach of the juvenile court system in uniquely juvenile behavior problems.

(The article originally appeared in 11 American Criminal Law Review 132 (1972) and is reproduced with the permission of the American Criminal Law Review, and the American Bar Association.)

James A. Hart
Commissioner
Office of Youth Development

THE RIGHT TO BE LEFT ALONE

JILL K. MCNULTY*

Since its inception,[1] the American juvenile court system has met with unwavering ambivalence. Charged with the guardianship of youngsters with numerous and varied problems, the juvenile court system—through legislative inadvertance or local fiscal policy—has been plagued by inadequate financial support. This state of affairs has in part led not only to dissatisfaction with the treatment of children who break the law, but also to a questioning of the wisdom of the juvenile court's involvement with children engaged in anti-social but non-criminal activity.[2]

This article will focus on the latter of those two problems, the overreach of the juvenile court system. Indeed, the child engaged in socially undesirable behavior, who Margaret Rosenheim aptly calls the "juvenile nuisance" [3] is the least helped and the most abused by formal processing through the juvenile justice system.

HISTORY AND DEVELOPMENT OF THE JUVENILE COURT MOVEMENT

Historical Roots of the Juvenile Courts

Before confronting the specific issue at hand, a brief look at the historical origin of the juvenile court will help to put the discussion in its proper perspective.

The juvenile court has roots in both criminal law and equity. This institution

> arose on the criminal side of the courts because of the revolts of those judges' conscience from legal rules that required trial of children over seven as criminals and the sentence of those children over fourteen to penalties provided for adult offenders.[4]

Retribution through punishment, the traditional objective of criminal proceedings, came to be widely regarded as inappropriate for an era in

*Attended Vassar College, 1953-1956; A.B., 1957, Northwestern University; J.D., 1960, Northwestern University Law School; Faculty Member, Chicago-Kent College of Law.

[1] The State of Illinois, used in this article as both a point of reference and as an illustration of how the states have approached the problem of juvenile delinquency, enacted a statewide juvenile court statute on July 1, 1899. *See* Law of April 21, 1899, §§ 1-26, [1899] Ill. Laws 131 (repealed 1965).

[2] Rosenheim, *Perennial Problems in the Juvenile Court*, in JUSTICE FOR THE CHILD 15 (*M. Rosenheim ed.* 1952).

[3] *See* Rosenheim, *Youth Service Bureau: A Concept in Search of Definition*, 20 JUV. CT. JUDGES J. 69 (1969).

[4] R. POUND, INTERPRETATIONS OF LEGAL HISTORY 135 (1923).

which many reforms were promulgated on the theory that the young were both educable and redeemable.[5]

Juvenile court supporters, searching for a theoretical justification of their creation, pointed to certain decisions of the English chancery courts involving the doctrine of *parens patriae*. In those cases, however, the doctrine was only invoked in custody contests to protect the assets of propertied minors. Thus, by tortured analogy the parameters of this doctrine were extended to embrace the concept of non-punitive, individualized supervision of children who violated the criminal law.[6]

This purportedly equitable origin of the juvenile court may help explain its basic attributes—an informality of procedure, a paternalistic rather than an adversary posture, and a therapeutic rather than a punitive purpose. But juvenile court supporters have adopted this rationalization to justify practices never previously employed in law or equity and to sanction the performance of judicial functions by administrative personnel.[7]

Although the role of chancery and the doctrine of *parens patriae* have been widely recognized as the theoretical basis for the juvenile court movement, the influence of deterministic criminology has had an even greater impact upon juvenile court theory and policy. As behaviorism has developed into a science, we have learned that conduct, to a large degree, is caused. A growing appreciation of criminal behavior and its relation to personal and social deviance has had a profound impact on the state's approach to anti-social juveniles.[8]

Legislation defining juvenile delinquency and setting forth the jurisdiction of children's courts has reflected some of the policy influences that contributed to their creation. Thus, early legislation defined youthful waywardness and delinquency in broad moralistic terms. In New York, for example, a statute, enacted in 1866, provided for the commitment to a reformatory of any individual over the age of 12 who "is willfully disobedient to parent or guardian, and is in danger of becom-

---

[5] Rosenheim, *supra* Note 2, at 5-6. Raising the age of criminal responsibility was perhaps the most profound contribution of the juvenile court system. Even where the criminal and juvenile courts shared jurisdiction over juvenile offenders, the latter eventually established itself, in practice, as the dominant forum. *Id.* at 6.

[6] *Id.*

[7] Tappan, *Juridicial and Administrative Approaches to Children with Problems*, in JUSTICE FOR THE CHILD 146 (M. Rosenheim ed. 1962).

[8] *Id.* at 147.

ing morally depraved . . . or is of intemperate habits and who professes a desire to reform." [9]

Legislation subsequently introduced in other states was drafted with moralistic expression and substantive imprecision that, in effect, gave juvenile courts administrative discretion to define delinquency as they chose.[10] Such laws not only permitted courts to intervene where a child committed a criminal act, but also sanctioned application of preventive measures to those thought to be potential offenders.[11]

---

[9] Tappan, *supra* note 7, at 153. New York's "Wayward Minor" statute, authorizing commitment of 16 to 21 year-olds to adult prisons for being "in danger of becoming morally depraved", was declared unconstitutionally vague and punishment for a mere status in violation of the eighth amendment. Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971), aff'd, 406 U.S. 913 (1972).

[10] *See, e.g.*, ARK. STAT. ANN. § 45-204 (1947), *as amended* (Supp. 1971), stating:

> The words "delinquent child" shall mean any child, whether married or single, who, while under the age of eighteen (18) years, violates a law of this state; or is incorrigible or knowingly associates with thieves, vicious or immoral persons; or without just cause or without consent of its parents, guardian or custodian absents itself from its home or place of abode, or is growing up in idleness or crime; or knowingly frequently visits a house of ill repute; or knowingly frequently visits any policy shop or place where any gaming device is operated; or patronizes, visits or frequents any saloon or dram shop where intoxicating liquors are sold; or patronizes or visits any public pool room where the game of pool or billiards is being carried on for pay or hire; or who wanders about the street in the nighttime without being on any lawful business or lawful occupation; or habitually wanders about any railroad yards or tracks or jumps or attempts to jump on any moving train, or enters any car or engine without lawful authority, or writes or uses any vile, obscene, vulgar, profane or indecent language, or smokes cigarettes about any public place or about any schoolhouse, or is guilty of indecent, immoral or lascivious conduct; . . .;

MISS. CODE ANN. § 7185-02(*g*) (Supp. 1971):

> Delinquent child is synonymous with the meaning of what is commonly called a juvenile offender, and means any child of not less than ten (10) years of age whose occupation, behavior, environment, or associations are injurious to his welfare or the welfare of other children; or who deserts his home; or who is habitually disobedient to or beyond the control of his parents, guardian or custodian; or who being required to attend school willfully violates rules thereof, or willfully absents himself therefrom; or who violates any state law or municipal ordinance; or who, by reason of being habitually wayward or habitually disobedient becomes an incorrigible or uncontrollable child; or who so deports himself as to injure or endanger the morals or health of himself or any other person.

See also N.J. STAT. ANN. § 2A:4-14 (Supp. 1972); PA. STAT. ANN. § 11-243(4) (1965).

[11] Tappan *supra* note 7, at 153. The delinquency definition in the original Illinois

The Issue Emerges—What Is the Proper Scope of Juvenile Court Jurisdiction?

Shortly after juvenile courts had gained acceptance and begun operation in most states, differences began to arise concerning the scope of their jurisdiction. In some states, the issue centered upon the question of whether the juvenile court should assume custody of dependent children. This controversy was one facet of a broader disagreement over the court's relationship to other child-serving agencies. Was the court to be the main countywide children's agency or merely one of several? But the question was often resolved by default. Since public children's services were largely nonexistent, the juvenile court was frequently the only agency with broad responsibility.[12]

In other states, the jurisdictional controversy focused upon whether delinquency should be defined so as to include the noncriminal, but socially unacceptable conduct of children. The proponents of broad jurisdiction stressed the salutary purpose of judicial intervention before the child had become confirmed in dissolute or disobedient ways. Moreover, they insisted that a broad jurisdictional base was necessary to preserve the great flexibility of treatment typically provided by the juvenile court laws.[13]

Criticism of this position has been twofold. Cases involving particularly lengthy commitments to training schools have been censured as abuses of authority because the severity of the sanction was disproportionate to the social harm against which it was directed.[14] More recently critics have asserted that the broad jurisdictional base not only permits but may actually encourage the misapplication of state power.[15] "When in an authoritative setting, we attempt to do something for a child because of what he is and needs, we are also doing something to him."[16]

Juvenile Court Act of 1899 was quite simple. It covered only those juveniles who violated state statutes and municipal ordinances. However, at the very next legislative session it was broadened to cover incorrigibles and children who formed undesirable associations; and in 1905 the definition was further extended to the idler, the wanderer and the child of "bad" habits—in other words, all children whose behavior was not a model of acceptable youthful activity. *See* Law of April 21, 1899, § 1 [1905] Ill. Laws [illegible]-53; § 1 [1901] Ill. Laws 141-42; §§ 1-21 [1899] Ill. Laws 131-37.

[12] Rosenheim, *supra* note 2, at 11.

[13] *Id.* at 12.

[14] *Id.* at 13.

[15] *Id.* at 13-14.

[16] Allen, *The Borderland of the Criminal Law: Problems of "Socializing" Criminal Justice*, 32 SOCIAL SERVICE REV. 116 (1958).

History of Jurisdiction Over the "Wayward" Child in Illinois: A Study in Ambivalence

Up to the present, the idea has prevailed that children who evince any serious maladjustment should receive as much help from the juvenile court as it can give, although no violation of criminal law or willful neglect is shown.[17] Under prevailing legislation in most jurisdictions:

> A child may become a candidate for redemption if he associates with neighbors or schoolmates who are vicious or immoral persons. Moreover, he should not absent himself from his home or school. He would do well not to express an unfavorable estimate of his parents or oppose their reasonable and lawful commands. . . . He must not idle or loiter when he should be at work, or work at unapproved occupations when he should, presumably, be idle. He must shun gambling places, policy shops, dram shops, railroad yards and tracks, streets at night, public pool rooms or bucket shops, and any place whose existence violates the law. He should also avoid "indecency," "disorderliness," sex, cigarettes, liquor, and obstinancy in general.[18]

Until Illinois adopted a new Juvenile Court Act in 1965,[19] nearly all of the conduct described above was, at one time or another, legislatively characterized as "delinquent."[20] The Act of 1965 repealed the Family Court Act, first enacted in 1899, revised the jurisdictional bases of the system, and established a new juvenile category entitled "Minor Otherwise in Need of Supervision" (hereinafter referred to as MINS).[21] Only violators of laws and court orders remained in the "delinquent" category. Of still greater significance was the fact that a MINS could be placed on probation by the court but could no longer be committed to the Youth Commission (now the Department of Corrections, Juvenile Division).[22]

---

[17] Tappan, *supra* note 7, at 156-57.

[18] *Id.*

[19] Ill. Ann. Stat. ch. 37, § 701 *et seq.* (Smith-Hurd Supp. 1972).

[20] Ill. Ann. Stat. ch. 23, § 2001 (Smith-Hurd 1949) (repealed 1965).

[21] Ill. Ann. Stat. ch. 37, § 701 (Smith-Hurd Supp. 1972). This category includes "(a) any minor under 18 years of age who is beyond the control of his parents, guardian, or legal custodian; (b) any minor subject to compulsory school attendance who is habitually truant from school; any minor who is an addict as defined in the 'Drug Addiction Act'." *Id.* at § 702-3.

[22] *Id.* at § 705-2(b).

Thus, Illinois legislatively acknowledged that anti-social but non-criminal behavior was different, both in degree and in kind, from conduct which violated the law.[23] Consequently, the severe sanction of commitment to the Youth Commission was reserved exclusively for criminal conduct.[24]

MINS: The Misguided Reform

Although an enlightened step, the reforms created a problem for the Juvenile Court. Under the defunct Family Court Act wherein both MINS and law violators were categorized as "delinquents," the court could commit to the Youth Commission any errant youth who did not respond to less drastic dispositions. The neglected and dependent child, however, could be placed in the care of the Department of Child and Family Services.[25] Although commitment to the Youth Commission was now, in effect, prohibited for those children falling within the MINS category, the Department of Children and Family Services was not required to accept them.

The result was a gap in the range of social services available for court placement of troubled children. If a child was "bad" enough, the Youth Commission would take him. If he was "good" but needed care, the Department of Children and Family Service would intervene. The "juvenile nuisance," however, was unwanted and uncommitable to any State-supported child serving agency. The reformers' good intentions created a dilemma for the courts which ultimately resulted in unfortunate judicial decisions and frustration of the legislative intent with respect to MINS.

---

[23] Several other states reserve the term "juvenile delinquent" to apply only to those children engaged in criminal conduct. *E.g.*, ARIZ. REV. STAT. Ann. § 8-201(8) (1971); GA. CODE ANN. § 24A-401(e) (1971); N. D. CENT. CODE § 27-20-02 (1971); WASH. REV. CODE ANN. § 13.04.010 (1962).

[24] One commentator on the Juvenile Court Act of 1965 made the following observation with respect to creation of the MINS category:

> [W]hile this decision may be tainted with the notion that adjudication of delinquency despite express statutory provision to the contrary, partakes somewhat of criminal guilt, it probably will afford some protection particularly to younger boys and girls put under probationary supervision by the court, and will be more conducive to a more precise determination by the court of the basis for adjudging a minor a ward. Only those adjudicated delinquent may be committed to the Youth Commission.

Trumbull. *Proposed New Juvenile Court Act for Illinois*, 53 ILL. S.B.J. 608, 613-14 (1965).

[25] ILL. ANN. STAT. ch. 23, § 5005 (repealed 1965).

The Juvenile Court found a way to maneuver within the confines of this dispositional straight jacket. While there was no question that a child adjudicated a MINS was not initially committable to the Youth Commission, the Act of 1965 did permit the court to place him on probation. If the MINS violated the terms of his probation, by merely running away or being truant from school, the court then adjudicated him delinquent for violation of a lawful court order. Because of this circular logic, children continued to be committed to the Youth Commission and its successor, the Department of Corrections, for non-criminal conduct.

Judicial Subversion of MINS

This practice was challenged in two cases, *In Re Presley*[26] and *People v. Sekeres*.[27] Each case involved a girl who was adjudicated a MINS for running away from home and subsequently put on probation. Thereafter, both girls ran away again, were adjudged delinquent for violating probation and were sent to the Department of Corrections for commitment to the State Training School for Girls.

The facts of Elvira Sekeres' court involvement revealed a family in turmoil and incompatibility between Elvira and her mother. Her father and mother were contemplating divorce.[28] Cynthia Presley also came from a broken home. In fact, the Illinois Supreme Court took notice of the fact that her mother and stepfather were unable or unwilling to care for her.[29] Cynthia was put on probation and placed in a foster home, but she again ran away.[30]

The Court, upholding the Juvenile Court's disposition in the *Presley* case, stated:

> "[w]e perceive no constitutional infirmity in legislation allowing the adjudication of delinquency and commitment of minors to the custody of the Youth Commission for misconduct which does not amount to a criminal offense. To hold otherwise would substantially thwart one of the salutary purposes of the Juvenile Court Act, viz, to provide for the rehabilitation of delinquent minors at a stage before they have embarked upon the commission of substantive criminal offenses. The state, as *parens patriae*, clearly has an interest in safeguarding the lives of delinquent minors, as well as

[26] 47 Ill. 2d 50, 264 N.E.2d 177 (1970).
[27] 48 Ill. 2d 431, 270 N.E.2d 7 (1971).
[28] Brief for Appellant at 7, People v. Sekeres, 48 Ill. 2d 431, 270 N.E.2d 7 (1970).
[29] *In re* Presley, 47 Ill. 2d 50, 264 N.E.2d 177 (1970).
[30] *Id.* at 53, 264 N.E.2d at 179.

> preserving an orderly society, and it would be largely hamstrung if it were precluded from depriving incorrigible minors of their liberty in the absence of the proof of their commission of substantive crimes. . . .[31]

In the *Sekeres* case, the Court added little to the foregoing except to note, with astonishing legal myopia, that "the defendant was not adjudged a delinquent because of her truancy from school or running away from home, but rather because she violated a lawful court order."[32] To find that a juvenile correctional institution is an appropriate placement resource for the "wayward" child comes close to equating the state penitentiary with a private hotel.

These two decisions judicially subverted the legislative purpose in creating a separate MINS category. Other state courts have recognized this fact and have accordingly reached an opposite conclusion.[33]

One must sympathize with the problem confronting the Illinois Juvenile Court of having jurisdiction over MINS without treatment resources to aid them. The *Presley* and *Sekeres* cases are monuments to the nonservice received by this type of child. The Court's sanctions were directed only at the children and not at the adults who had failed them. The record is devoid of evidence that any meaningful attempt was made to strengthen these inadequate families. Instead, the Court repeatedly returned children to situations in which they compiled a proven record of failure, and then, applied more severe sanctions when they reacted in a predictable manner.

An amendment to the Juvenile Court Act, recently passed by the Illinois General Assembly but not effective until 1974, will prohibit an

---

[31] *Id.* at 56, 264 N.E.2d at 180.

[32] People v. Sekeres, 48 Ill. 2d 431, 433, 270 N.E.2d 7, 8 (1970).

[33] In People *ex. rel.* D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971), the Colorado court had before it the same legal issue as that presented in the *Sekeres* and *Presley* cases. The jurisdictional categories under the Colorado Juvenile Court Act are virtually identical to those in the Illinois act. *See* COLO. REV. STAT. §§ 22-1-3 (17) (a) (1), 22-1-3 (18), (Supp. 1967). In reaching the opposite result of the Illinois Supreme Court, the Colorado court stated:

> The determinative issue in this case is whether a violation for the terms and conditions of probation in a CHINS [MINS in Illinois] adjudication is a violation of a "lawful order of court" made under the Children's Code within the meaning of 1967 Perm Supp., C.R.S. 1963, 22-1-3 (17) (a) (iv). We answer this question in the negative. . . .
>
> Viewing the statute in its entirety, we find that the Colorado Children's Code fully provides for the actions to be taken in the event that a child violates the terms and conditions of CHINS probation. 1967 Perm. Supp.,

adjudication of delinquency for violation of court orders alone.[34] Another amendment will also require that the Department of Children and Family Services accept court commitment of MINS who violate court orders.[35] Taken together these enactments should not only keep MINS out of the Department of Corrections institutions, but will also provide a State-supported treatment alternative for these children in the future.

However laudatory these amendments may be, they fail to address the fundamental question of whether MINS are appropriate subjects of juvenile court jurisdiction at all. While Illinois now recognizes both the distinction between the delinquent minor and the MINS and the impropriety of comingling the MINS and the confirmed offender, the retention of court jurisdiction over him implies that judicial intervention is an appropriate and effective means of changing deviant, yet noncriminal behavior. But despite this implication many juvenile court judges acknowledge that the list of MINS helped by processing through the court system is a short one.

Our ambivalance regarding these children should be resolved by facing the basic issues squarely. Those interested and involved in the juvenile justice system must seriously consider the question of what the proper role of the juvenile court ought to be. They must determine the extent to which the court bears the community's total burden of antisocial and deviant conduct. How much should it bear? What part of a community's total program should a court plan and direct? Should

---

> C.R.S. 1963, 22-3-18, comprehensively deals with this problem by providing for review of the terms and conditions . . . violated, it provides for notice to the child, his parents, guardian or other legal custodian, and a full hearing to determine whether or not these conditions were in fact violated. It is only reasonable to assume that, as to those acts of the child which are not denominated as acts of delinquency, this method of review was intended to be exclusive.
>
> Under the facts before us, it would be contrary to the obvious legislative intent to allow a child to be committed to an institution for juvenile delinquents where the only acts alleged were those which were not, in and of themselves, grounds for an adjudication of delinquency and for which the statute already provides a comprehensive and complete procedure for review and punishment.

People *ex rel.* D.R. v. E.R., *supra* at 528-29, 530-31, 487 P.2d at 825-26. *See In re* E.M.D., 490 P.2d 658 (Alas. 1971).

[34] P.A. 77-2096, [1972] Ill. Laws § 2-2 to 3 (Smith-Hurd Legis. Service).

[35] *Id.* § 5-2(b). The Department is still not required to accept MINS for placement except if he is again adjudicated a MINS for violation of a court order. Thus, the dilemma created by the lack of social services available to the court still exists for the MINS. It remains to be seen if community based resources will be developed to fill the gap.

juvenile courts be the focus of the entire system for dealing with children in trouble? Should the court not have a more clearly defined, more specialized, and therefore a more modest role?[36]

JURISDICTION OVER MINS SHOULD BE REMOVED FROM THE JUVENILE COURT

The juvenile justice system in this country is continually bombarded with criticism emanating from a flood of books, articles, and public statements which detail how poorly it operates. A primary reason for its failures is the frequency with which most juvenile court statutes bestow a "big daddy" role on the juvenile court. While the court is supposed to be omniscient, it is given only minimal resources to do the job.

To improve the performance of the juvenile justice system, it is imperative we recognize that no juvenile court, any more than a criminal court, can constitute society's main protection against anti-social deviation.[37] The court's power should be used only in those cases requiring the application of authority, restraint, or correctional supervision. Exercise of its legal authority should be justified only upon a definitive determination that a juvenile has either engaged in delinquent behavior of a type seriously threatening to the community or has suffered from the willful neglect of his parents. Application of this concept will of necessity narrow the scope of juvenile court involvement.[38]

Political Consequences of Juvenile Court Overreach

In direct opposition to the foregoing proposition, the broad criteria of the MINS jurisdiction of the juvenile court, such as "beyond control" and "habitually truant," need be no more than suggestive beginnings for a judge fully dedicated to prevention. The zealous judge can, in fact, intervene in any case in which the condition of the child, his parents, or his neighborhood attracts the concern of the court's personnel.[39]

---

[36] Kahn, *Court and Community*, in JUSTICE FOR THE CHILD 217-18 (M. Rosenheim ed. 1962).

[37] N. KITTRIE, THE RIGHT TO BE DIFFERENT 167-68 (1971).

[38] Tappan, *supra* note 7, at 167.

[39] *Id.* at 156-57.

The fact that a child is "ungovernable" [40] brings him within the definition of MINS. But what behavior is ungovernable? How do the police and courts determine when a child has acted in such a way? On the basis of whose values should the decision be made? Does this term not depend upon the type of family relationships the child confronts? With such a broad definition, apprehension and adjudication too often depend upon the child's socio-economic status or upon the personal values of the police, the judge, or the court's administrative staff.[41]

Some argue that the court, in order to act in the child's best interests, should not be bound by narrowly and technically constructed limitations upon its authority. But a grant of plenary power in the form of vague jurisdictional criteria presupposes that juvenile courts and their officers will use their power exclusively in the child's interest. Unchecked discretion, like other power, can corrupt. Courts must constantly guard against excessive therapeutic zeal.[42]

When judges base their findings upon social and psychological data, rather than upon legal proof of overt and dangerous conduct, they extend their coercive control powers beyond its proper scope. They become, in effect, administrative bodies of investigation and treatment. Courts are neither equipped nor designed to function in this manner, yet many juvenile court personnel still adhere to the administrative philosophy which has heretofore permeated the juvenile court system.

Statistics from the U.S. Children's Bureau show that 28.4 percent of all delinquency charges involve offenses that only juveniles can commit, such as truancy, running away, curfew violations, or being ungovernable.[43] Furthermore, 50.2 percent of all girls and 20.5 percent of all boys in juvenile institutions were committed for indiscretions which do not constitute adult offenses.[44] The state's purpose may not be punitive, as the courts have endlessly reiterated, but the deprivations visited upon the child and his family are not in the least diminished because they are benevolently inspired.[45]

The juvenile who refuses parental supervision, the habitual drinker who cannot hold a job—both might be objectionable to the general

---

[40] *Cf.* ILL. ANN. STAT. ch. 37, § 702-3(a) (Smith-Hurd Supp. 1972).

[41] N. KITTRIE, *supra* note 37, at 118.

[42] *See In re* Johnson, 30 Ill. App. 2d 439, 174 N.E.2d 907 (1961); *In re* Sanders, 168 Neb. 458, 96 N.W.2d 218 (1959).

[43] HEW CHILDREN'S BUREAU, JUVENILE COURT STATISTICS 10 (1965).

[44] *Id.*

[45] Tappan, *supra* note 7, at 159.

morality, yet the degree and immediacy of their social threat does not clearly justify judicial intervention The therapeutic state, therefore, must be protected against becoming the last refuge of unjust social compulsion in the name of morality, welfare, and health. If, for example, the ungovernability of juveniles should properly be left to parental, rather than state control, can the subjection of youth to the therapeutic rather than the criminal process redeem the unnecessary social intervention?[46]

Social Consequences of Judicial Court Overreach

Great damage can be done to relationships in a troubled family when the court, intervening as *parens patriae*, totally usurps the parental function. In the process, parents are ignored, blamed, and bypassed. Little is done to help parents assume responsibility for their children's behavior.[47]

The child's perception of his parents' worth may be seriously undermined by court action which does not recognize and support the parents' continuing function. Parents are discouraged because they perceive the child and the court as a threatening combination or because the child manipulates one authority against another. Moreover, a family is unable to benefit from the assistance of a voluntary agency because the parents become dependent upon the support and guidance of the court as a "powerful" parent.[48] Thus, unwarranted court intervention may not only be unhelpful but actually detrimental to the development of a troubled family's ability to cope with its problems. It can only further diminish the child's respect for his parent and weaken what little strength the parent brings to problem-solving.[49]

Much of the law now governing the relationships between parent and child, school and child, and society and child should be thoroughly re-examined. The benevolent philosophy of the *parens patriae* process "often disguises the fact that the offender is regarded as a 'nonperson' who is immature, unworldly, and incapable of making effective decisions with regard to his own welfare and future." [50]

This indiscriminate therapeutic emphasis is antithetical to the fundamental precepts of free will and personal restraint which have long func-

[46] N. KITTRIE, *supra* note 37, at 379-80.

[47] Studt, *The Client's Image*, in JUSTICE FOR THE CHILD 212 (M. Rosenheim ed. 1962).

[48] *Id.* at 214.

[49] *Id.*

[50] A. PLATT, THE CHILD SAVERS 160 (1969).

tioned as tools of social control. The right to be left alone implies the right of a young person to make decisions affecting his life and future. Recognition of the right, in turn, raises such fudamental issues as whether a child is entitled, without parental consent, to leave a chaotic home situation; whether he may refuse parental demands that are unreasonable; whether he may refuse to attend a school ill-suited to his needs and abilities and whether he may seek medical and psychiatric assistance, birth control information, or even abortion.[51]

There is a growing recognition, evidenced by a few recent court decisions and some legislative proposals, that the developmental period between puberity and adulthood has special characteristics. Nonetheless, the legal structure has thus far not readily lent itself to providing roles in which a youth can fulfill the responsibilities thrust upon one who reaches adolescence. Because compulsory education and child labor laws cover large parts of this middle period, the primary social role available to persons in the middle and late teens is that of student. Adult roles, such as marriage, work, and military service, ordinarily become available only after age 18.[52]

Teenagers see themselves as *sui generis*—neither adults nor children. Both the adolescent and his parents expect a gradual emancipation from parental authority, beginning as early as age 12. Throughout the teenage years, the peer group exercises more influence over the individual's attitudes and values than adults. Approaching these young people as "children" or "juveniles" ignores both their unique status and the responsibilities which compliment that status.[53]

There is, however, one notable exception to the aforementioned general legal approach to the treatment of children. It is one legal route to instant adulthood for teenagers in most jurisdictions. If such a person (as young as age 13 in some states, including Illinois) commits a serious criminal act, he might find society quite ready to deprive him of the protective benefits of the Juvenile Court Act, and to transfer him to criminal court to stand trial as an adult and receive adult penalties if found guilty.[54] A legal mechanism is not provided whereby a teenager can make decisions governing his life if they happen to be in conflict with parental wishes. We are persistently attempting to redeem the juvenile nonconformist through court processing, yet if the youth decides to

---

[51] WHITE HOUSE CONFERENCE ON CHILDREN, REPORT TO THE PRESIDENT 347 (1970).

[52] Studt, *supra* note 47, at 208.

[53] *Id.*

[54] *See, e.g.*, ILL. ANN. STAT. ch. 37, § 702-7(3) (1972).

commit an act which constitutes a threat and danger to the community, our solicitude stops. We expeditiously thrust adult status upon him in order to make him eligible for the punitive sanctions of the criminal law.

To suggest that the proper role of the juvenile justice system is to confine itself to dealing with seriously delinquent and willfully neglected children certainly does not suggest that other types of troubled children and their families should be denied help. It does suggest, however, that compulsory rehabilitation must be limited to those whose conduct is dangerous to the community; the threat must be to others, not to oneself.

Drawing a distinction between the social defense and public welfare aims of state-offered therapy, and limiting compulsory therapy to situations which pose a significant danger to society accomplishes two objectives: it will bring into focus the social defense role of therapeutic power and point to the need for due process safeguards therein, and it will lead to an increased awareness of the need for innovative, voluntary programs under the welfare wing of therapeutic power.[55]

Many problem children must be offered services by administrative agencies which are independent of the courts. Although such services are presently provided for many neglected and dependent children, additional services and programs must be expanded or created for MINS and petty delinquents who do not seriously threaten the community. The results of the failure to do so are graphically illustrated by the case of In re *Blakes*.[56]

In re *Blakes*-Juvenile Justice in Action

Richard Blakes was first brought to the attention of the Illinois Juvenile Court on December 8, 1969, when a petition was filed by a representative of the public schools requesting that Richard, his sister and two brothers be declared minors in need of supervision. It was alleged that Richard had been present only one-half day during the current school year, that his sister had been present only three days and that his brothers had attended about thirty of a total of fifty-nine school days.

On February 29, 1970, after a hearing, the petition was amended to allege a dependency. The court thereupon found the children to be dependent, ordered that Richard be taken from the custody of his par-

---

[55] N. KITTRIE, *supra* note 37, at 379-80 (1971).
[56] 4 Ill. App. 3d 567, 281 N.E.2d 454 (1972).

ents and placed him in the care of the Department of Children and Family Services.

Richard was so placed, but ran away. After he was found, he was committed to the custody of a member of the Juvenile Court Services Department, but again fled. Richard was found again and adjudicated a delinquent by the court. Apparently, the only delinquent act proved against him was the theft of one bag of potato chips.

At Richard's dispositional hearing, the representative of the Court Services Department advised the court that his department had no facilities in which to place Richard. Likewise, the representative of the Department of Children and Family Services claimed that his department had no further placement resources for Richard but suggested that one school in Texas might accept him. The school was contacted, but the court declined to accept that alternative when advised that the cost of treatment there would exceed $950 per month. Instead, Richard was committed to the Department of Corrections.

His social history showed that, as of November 23, 1970, Richard's family situation was as follows: The whereabouts of his older brother and sister were unknown; his mother was in quarantine at a tuberculosis sanitarium; two younger brothers were in an institution for children in Texas; and a young sister was in a local foster home. Moreover, the father had totally deserted the family and the mother was completely unable to function as a responsible parent. Although not specified in the opinion, the social report also listed forty-two complaints of a criminal nature against Richard, none of which had been proved against him in court proceedings. The report concluded:

> Richard had no home to go to and thereby lived as best he could —by any means he knew of. Theoretically, Richard, in this worker's opinion cannot be held responsible for his actions and behavior. Technically, Richard may be termed a menace to society and for the well-being of the public, Richard should be committed to an institution. *Again, unfortunately, there is no available institution to attempt to rehabilitate Richard, mainly due to his nature of running away. Various institutions have been contacted as to the placement of Richard, but due to his history, he is not acceptable.*[57] (Emphasis added.)

The reviewing court found no error in the disposition, even though the period of potential confinement for stealing a bag of potato chips,

[57] *Id.* at 570, 281 N.E.2d at 455.

prior to his attaining age 21, could aggregate to almost eight years. It rejected the contention that there was a denial of equal protection of the laws on two grounds: (1) the due process protections *In re Gault*[58] applied only to the adjudicatory stage, and not to the dispositional stage, of juvenile proceedings; and (2) the United States Supreme Court in *McKeiver v. Pennsylvania*[59] held that the legislative authorization for custody until age 21 under a juvenile court act is not a measure of the seriousness of the particular act the juvenile has performed.

The reviewing court also upheld the Juvenile Court's refusal to authorize payment in excess of $950 per month to finance proper care for Richard. It offered the following justification:

> In refusing to authorize placement in Brown's School for Boys at $950.00 or more per month the court was exercising its discretion in serving the interests of the minor, and the public [as required by the Juvenile Court Act]. We are unable to say the court abused its discretion in so refusing.[60]

The case of Richard Blakes is but one example of how processing in the Juvenile Court only further abuses a child for whom appropriate rehabilitative services do not exist. The case typifies the sad story repeated daily in the juvenile courts. Richard, like many other children who come before the court, was not a serious social threat but rather a victim of an appalling family situation. Because of the absence of proper resources to help him, the court adjudged him delinquent and committed him to the Department of Corrections where he must live with many confirmed offenders. The helping hand strikes again.

To be effective, juvenile services, especially for children who are fleeing or reacting to troubled home situations, must be completely voluntary and free from official court involvement. Most of these children are mistrusting, and sometimes, blatantly hostile, to coercive adult authority. To them, adult authority represents the very problem from which they seek relief.

Obstacles to Voluntary Service Programs

Despite the crying need for voluntary youth services, programs that attempt to provide them have met with numerous obstacles.[61] Runaway

---

[58] 387 U.S. 1 (1967).

[59] 403 U.S. 528 (1971).

[60] *In re* Blakes, 4 Ill. App. 3d at 572, 281 N.E.2d at 457 (1972).

homes, for example, have encountered serious legal difficulties when their services have been opposed by the parents of children using them.[62] Because the hostels retain the trust of their clientele by neither forcing an unwilling child to return to his parents nor turning him over to law enforcement officials, their only other alternative is to send the youngster back to the streets to fend for himself. This is indeed a sad comment upon our juvenile justice system.

The effectiveness of runaway youth hostels, group homes, and youth service bureaus is further attenuated by the fact that there are no regularizing policy norms to differentiate and channel young persons in difficulty to agencies rather than to courts. Whether a youngster with a behavior problem goes one route or the other is often quite adventitious. Excising the jurisdiction of the juvenile court over the "wayward" child should spur the development of community based social service resources for these children, and place the responsibility for the socially disruptive child where it belongs. The community has no right to remove or reform an adult, no matter how obnoxious as long as he does not violate the law. Likewise, there is no valid reason why the community should have a right to remove a socially offensive child from its midst. On the contrary, it should tolerate him and offer him voluntary assistance.

Meeting the Challenge of Helping Troubled Children

Much of this paper has been devoted to the proposition that the troubled, provocative child, the "juvenile nuisance," should be served by voluntary community based social service agencies rather than processed through the court system. One of the most pressing problems hampering the accomplisment of this goal has been the dearth of such services. These children are not welcome in privately supported, traditional childcaring agencies, yet virtually no state supported facilities or programs have developed to serve them. Recent developments on the federal, state and local levels, however, indicate a growing concern about the failures of traditional methods of handling the "wayward" child.

[61] A recent article on youth homes for runaways in several cities stated that their effectiveness depends upon their voluntary nature. It also pointed out that where such services are available to troubled youth, they will be used. *See Runaway Children—A Problem for More and More Cities*, U.S. News And World Report, Apr. 24, 1972, at 38-42.

[62] *Id.*

Innovative Legislative Proposals

The Runaway Youth Act.[63] This legislation, now pending in Congress, is designed to stimulate the creation of social service resources for troubled children at the local level through federal funding asistance. It would establish a three-year program, with appropriations totaling $30,000,000 to be administered by the Department of Health, Education and Welfare. Upon application by a state, locality, or a non-profit private organization, the Act would assist in the establishment, strengthening, or funding of existing or proposed locally controlled facilities which provide temporary shelter and counseling services to juveniles who have left home without the specific permission of their parents or guardians.[64] The federal share of funding for construction of new facilities could not exceed 50 percent of the total cost, or exceed 90 percent of the annual cost of renovation or acquisition of existing structures, provisions for counseling services, staff training, and general costs of operations for each home.[65] The Act is a welcome attempt to redress the growing national problem of runaway children, just recently publicized in the national news media.[66]

In order to qualify for grant assistance, an applicant would be required to submit a plan for each house or location. The plan would cover such matters as capacity, staff, insurance of proper relations with law enforcement personnel, return of runaways from correctional institutions, return of runaways to their parents or guardians, aftercare counseling (if feasible), records, annual reports, accounting procedures, and fiscal control.[67] Only if the plan meets specific requirements, would funding be granted. Moreover, federal supervision would continue after funding. The Secretary of the Department of Health, Education and Welfare would be required to submit an annual report to Congress on the status and accomplishments of runaway houses funded under the Act.[68]

---

[63] S. 2829, 92d Cong., 1st Sess. (1971). One of the primary sponsors of this legislation was Senator Birch Bayh.

[64] *Id.* at § 102 (a).

[65] *Id.* at § 107.

[66] *Id.* at § 2. *See also Runaway Children—A Problem for More and More Cities, supra* note 61, at 38-42; Rowan, *Locking 'em Up Isn't the Answer*, Chicago Daily News, March 21, 1972.

[67] S. 2829, 92d Cong., 1st Sess. § 102(b) (1971).

[68] Id. at § 105.

The Illinois Unified Code of Corrections.[69] House Bills 810 and 811, recently passsed by the Illinois General Assembly, will go into effect January 1, 1973. As previously noted, House Bill 810 contains amendments to the Illinois Juvenile Court Act, effective in 1974, which will prohibit an adjudication of delinquency and commitment to the Department of Corrections of a MINS who violates a court order of supervision. In addition, the new code prohibits commitment of a minor to the Department of Corrections unless incarceration is permitted for adults found guilty of the offense for which the minor was adjudicated delinquent.[70] This provision is intended to end incarceration in state correctional institutions of juveniles for such children's offenses as smoking, drinking, running away, truancy and curfew violation.

After July 1, 1973, minors under 13, adjudged delinquent, may be committed to the Department of Children and Family Services. No such child may be committed by the Juvenile Court to the Department of Corrections unless the Department of Children and Family Services certifies that no suitable and proper place can be found for the child and that the best interests of the public and the child would be served by commitment to the Department of Corrections. The Court must afford the minor an opportunity to appear and oppose this action.[71] Furthermore, the Department of Children and Family Services may not administratively transfer any child in its care to the custody of the Department of Corrections.[72]

This procedure is a milestone. It evidences a legislative recognition that young children who commit delinquent acts are much more the victims of society than aggressors against it and that they are, therefore, presumptively entitled to treatment and placement outside the correctional system. Hopefully, it will diminish the number of children 12 years old and younger who are adjudged delinquent and committed to juvenile correctional institutions in Illinois.

Community Based Social Service Resources for Troubled Children

It is apparent that diversion of troubled children from the juvenile justice system must be accompanied by community based voluntary

---

[69] P.A. 77-2096 to 2097 [1972] Ill. Laws (Smith-Hurd Legis. Service). In State v. Marci, 493 P.2d 355 (Utah 1972), the court found no liability for providing food, shelter and counseling to runaway youths at hostel.

[70] *Id.* at 77-2096, § 5-2(1) (a) (4). There is no such restriction in the present Juvenile Court Act. ILL. ANN. STAT., ch. 37, § 705-2 (Smith-Hurd Supp. 1972).

[71] P.A. 77-2095, § 5-1 [1972] Ill. Laws (Smith-Hurd Legis. Service).

[72] P.A. 77-2097, ch. 3 [1972] Ill. Laws § 3-10-11 (Smith-Hurd Legis. Service).

social service programs designed to identify and help meet their needs.[73] The necessity for these services was in fact recognized by the Task Force Report on Juvenile Delinquency and Youth Crime of the President's Commission of Law Enforcement and the Administration of Justice.[74] Their report called for the establishment of a youth services bureau on the local level to work with trouble-making youth on an individual basis.[75]

The proposed bureau would establish, with or without assistance from other agencies, group and foster homes, work and recreational activities, employment counseling, and special education, both remedial and vocational. Several innovations will help correct the shortcomings of the past. Referrals to the bureau from law enforcement and court sources would have a preferred status; the youth services bureau would be required to accept them all. After acceptance, the bureau would encourage both the youth and his family to participate in the formulation of the service plan. In this respect, the bureau would operate in the same manner as the traditional public and voluntary child welfare agencies except that the clientele of the bureau would be less tractable and possibly somewhat older than that served by most child welfare agencies.[76]

Illinois Youth Service Bureaus: Blueprint for the Future. Partly in response to the Task Force Report, youth service bureaus have begun to emerge in various communities throughout the nation.[77] In Illinois, for example, some of the first bureaus began with funding assistance from the Illinois Law Enforcement Commission (hereafter referred to as ILEC), the State planning agency for federal funds made available under the Omnibus Crime Control and Safe Streets Act of 1970.[78]

---

[73] Sheridan, *Juveniles Who Commit Noncriminal Acts: Why Treat in a Correctional System?*, 31 FED. PROB. 26 (1967). Wald, *The Changing World of Juvenile Law: New Vistas for the Nondelinquent Child–Alternatives to Formal Juvenile Court Adjudication*, 40 PA. B. ASS'N Q. 37.

[74] THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME (1967).

[75] *Id.* at 20.

[76] *Id.* at 21.

[77] *See* S. NORMAN, THE YOUTH SERVICE BUREAU, A KEY TO DELINQUENCY PREVENTION (1972); Note *A Proposal for the More Effective Treatment of the "Unruly" Child in Ohio: The Youth Services Bureau*, 39 U. CIN. L. REV. 275 (1970).

[78] 42 U.S.C. §§ 3701-81 (1970). Statistics from Statistics Services Dept., Cir. Ct. of Cook County, Juvenile Division.

In Illinois ILEC is currently helping to fund 13 youth service bureaus. The primary purpose of the Illinois bureaus is to divert youth from the juvenile court system. In

some youth in imminent danger of juvenile court processing or as a source of meaningful help in identifying and meeting their needs. Preliminary data indicate that the bureaus are more effective in some communities than others. The reasons for the disparity are still under study.[80]

If youth service bureaus succeed in diverting troublesome youth from the juvenile justice system, identifying their needs, and seeing that they are met, the bureaus will have made enormous contributions. They will have significantly reduced the overload on the juvenile justice system which hampers its effectiveness, especially in large urban centers, and they will provide meaningful assistance to a group of troubled youngsters who, at present, are not only unassisted but abused by processing through the court system.

The Child Advocate. A primary reason why the needs of many children are only partially met, or not met at all, is the lack of a system responsible for securing their basic constitutional rights. These children need an advocate. The structural arrangement for the office of child advocate is much less important than a clear definition of its functions. A youth service bureau could and should perform the role of child advocate on a local level.

Child serving agencies in the private domain do not perform as effectively as they should because of a number of biases which have emerged in their development. Too many agencies emphasize program description rather than implementation and evaluation. Moreover, such agencies are often dominated by one particular profession that develops programs in order to expand a profession or guild's territory rather than to give needed services. Finally, expertise in diagnosis and classification is often used as a means to exclude children from service.

Publicly supported agencies have similar biases. They tend to impose inflexible eligibility requirements and seem to function with an appalling lack of accountability. The client and his family are often the last consulted before decisions affecting his future are made.

The child advocate should be a children's spokesman, exclusively committed to their interest and to the improvement of the services offered. It should not only represent children who seek its help or come to its notice, but should also come to the aid of those unable to ask for assistance. It should primarily be concerned with improving the quality

[80] Data on youth service bureaus in Illinois was provided by Magnus J. Seng, Ph.D. and Mr. Alan Carpenter, staff specialists in juvenile delinquency prevention programs of the Illinois Law Enforcement Commission.

of service to children and using its knowledge and skills to bring together the child and the required service. It should not only attempt to persuade unresponsive agencies to improve their services, but it should also have funds to purchase temporary service, if required. Finally, it should recognize any local abuses or deficiencies in federally funded programs and call them to the attention of proper authorities at the federal level.

The child advocate should be active in five main areas. First, it should help families to obtain needed services. Where a child is not receiving proper service, it should represent the child in negotiations with the defaulting agency. Second, if a child gets into school difficulties which the parent cannot handle, the advocate should represent the child in dealings with the school. If the problem is mostly attributable to the child, it should seek help for his behavior problems and then seek his reinstatement. If the school is being too restrictive in its regulations, it should try to negotiate changes. Third, the advocate should work with the police, attempting to secure their confidence and cooperation in referral of troubled families and children to the advocate rather than to the courts. It should encourage employment of juvenile officers with the necessary temperament and skills to deal effectively with children and should also work to revise outdated laws and police regulations with respect to child-police relations. Fourth, the advocate should provide the child with adequate legal representation in court, if it is not supplied by his parents. It should be concerned with the entire juvenile justice process and the child's exposure to each facet of the system. Fifth, the advocate should help devise a system whereby a child serving agency is primarily accountable to the client or his representative, and not to an external funding source.[81]

Conclusion

The juvenile court has long been plagued with an irreconcilable ambivalence to the roles available to it. It is either a court with a judge, legal procedures, legal safeguards and legal solutions, or it is a social agency dispensing psychological, socio-economic and educational help without any legal coercion. For the most part juvenile courts inwardly seek to achieve the latter while being required to operate within the framework of the former.[82] However, the juvenile court

[81] White House Conference on Youth Report to the President, 391-96 (1970).

[82] N. Kittrie, The Right to be Different 153 (1971).

> is not in point of fact a clinic, a school, or a studio. It is a court operated by legal rules and legal standards. This statement will surprise no one, but it deserves to be underscored. The juvenile court, whatever its aims may be, exists as a law court with all the connotations appropriate to such an institution.[83]

Despite the emphasis on *parens patriae* aims, the juvenile court possesses the power to deprive the youth of his liberty, to separate child and family and to attach the stigma of a juvenile court adjudication of delinquency.[84]

Because of the waning influence of the modern family, church, school and community, especially in urban centers, the role of principal keeper of the social order and conformity devolves increasingly on the police and the courts. The burden is not only too great for the juvenile justice system alone to handle, it is inappropriate. The juvenile court should serve as the last resort, used only when questions of restraint and coercion arise. In this perspective, the business of the juvenile court should usually be limited to offenders whose conduct would be a violation of the criminal law if committed by an adult. The juvenile court should not be saddled with the role of a child welfare agency or with the rehabilitation of children who run away, smoke, refuse to attend school, or are otherwise "incorrigible." For these problems, other suitable agencies must be found in existing or new social service agencies.

The schools should handle truancy. The family should cope with disobedience. Court intervention should not be predicated on this conduct alone. In a great many MINS cases, the fault is not primarily that of the youngster, but of his parents, his neighborhood, or his school. What is needed is not modification of the child, but the reformation of his family life, his home environment, and his school experience. Remedies directed toward these problems would often be exceedingly more appropriate than those directed toward the child himself.[85]

The greatest single contribution that community based social service resources could make would be to assist community institutions to become more responsive to the needs of all the children they serve. Courts will never have adequate treatment resources to meet the needs of the

---

[83] Paulsen, *The Juvenile Court and the Whole of the Law*, 11 WAYNE L. REV. 597, 598 (1965).

[84] Jones v. Commonwealth, 185 Va. 335, 341, 38 S.E.2d 444, 447 (1946).

[85] N. KITTRIE, *supra* note 82, at 165-166.

delinquent child as long as they are deluged by non-criminal behavior problems.

The introduction of legislative and procedural reforms and the stripping of the juvenile court's public welfare agency functions would do much to revitalize the sagging juvenile justice system. It should then be able to focus attention on its primary function—the control and correction of juvenile behavior that is dangerous to the community. But in order to accomplish this, society, the legislatures, and the courts must restrain their overzealous impulses to reform the young and, at the same time, acquire a greater measure of tolerance for less serious, merely irritating deviations. Likewise, a juvenile court operating with broader procedural safeguards should be less reluctant to apply more severe sanction when the circumstances and case histories of offenders so indicate.

The juvenile justice system can share in the campaign for deterrence and prevention of juvenile delinquency. But it is obvious that the major efforts must be made within the community itself. Poverty, unfit parents, broken homes, inadequate education, poor vocational training, and lack of opportunities[56] cannot be abolished by judicial decree.

[56] *Id.* at 167-168.